

**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

GS HOLISTIC, LLC,  
  
Plaintiff,  
  
v.  
  
MR VAPES SMOKE SHOP,  
  
Defendant.

Case No. 1:23-cv-00282-JLT-SAB  
  
ORDER STRIKING FIRST AMENDED  
COMPLAINT AND CONTINUING  
SCHEDULING CONFERENCE  
  
(ECF Nos. 3, 8)

Plaintiff filed this action on February 26, 2023. (ECF No. 1.) A scheduling conference is currently set for June 20, 2023. (ECF No. 3.) On April 14, 2023, default was entered against the sole Defendant named in the initial complaint. (ECF No. 6.) On June 1, 2023, Plaintiff filed a first amended complaint. (ECF No. 8.)

Amendment of the complaint is governed by Rule 15 of the Federal Rules of Civil Procedure which provides that a party may amend the party's pleading once as a matter of course within twenty-one days after serving it or within twenty-one days after a responsive pleading has been filed. Fed. R. Civ. P. 15(a)(1); see also Ramirez v. Cnty. of San Bernardino, 806 F.3d 1002, 1007–08 (9th Cir. 2015) (“[B]efore 2009, a plaintiff had the right to amend his complaint up until the point in time when a responsive pleading was filed or within twenty days after service of the pleading if no response was permitted and the case was not on the trial calendar [however,] [s]ince 2009, a plaintiff has the right to amend within twenty-one days of service of

1 the complaint (15(a)(1)(A)), or within twenty-one days of service of a responsive pleading or  
2 service of a motion under Rule 12(b), (e), or (f).”). Otherwise, a party may amend only by leave  
3 of the court or by written consent of the adverse party, and leave shall be freely given when  
4 justice so requires. Fed. R. Civ. P. 15(a)(2).

5 Here, Plaintiff was required to file his amended complaint as a matter of course within  
6 twenty-one days of serving it. Plaintiff did not do so, therefore, Plaintiff must either get the  
7 written consent of the opposing party or seek leave from the Court to file a first amended  
8 complaint. Fed. R. Civ. P. 15(a)(2). Plaintiff did not file a written stipulation to amend nor was  
9 leave sought from the Court to file a first amended complaint. The Court shall strike the  
10 complaint, and continue the scheduling conference to allow for the filing of any motion for leave  
11 to amend or stipulation, and for service and appearance of any newly named Defendant.

12 Accordingly, IT IS HEREBY ORDERED that:

- 13 1. Plaintiff’s first amended complaint (ECF No. 8) is STRICKEN from the record;  
14 and
- 15 2. The scheduling conference set for June 20, 2023, is CONTINUED to **August 29,**  
16 **2023, at 10:00 a.m.**

17 IT IS SO ORDERED.

18 Dated: **June 5, 2023**

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20 UNITED STATES MAGISTRATE JUDGE  
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